

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SMITH BAGLEY, INC.)
PETITION FOR DESIGNATION AS AN)
ELIGIBLE TELECOMMUNICATIONS)
CARRIER UNDER 47 U.S.C. § 214(e)(6),)
FCC 97-419)

CC: 96-45

File No. _____

To: Chief, Common Carrier Bureau

**Petition for Designation as an Eligible
Telecommunications Carrier**

Smith Bagley, Inc. ("SBI"), by its counsel, submits this Application for Designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(6) of the Telecommunications Act of 1996 ("Act"), 47 U.S.C. § 214(e)(6). SBI requests that it be designated as eligible to receive all available support from the federal Universal Service Fund ("USF") for the federally reserved Native American lands within its service area. In support of this application, the following is respectfully shown:

I. General Qualifications

1. SBI is a corporation organized under the laws of the District of Columbia. In addition, SBI is a telecommunications carrier as defined in 47 U.S.C. § 153(44) and 47 C.F.R. § 51.5(a), and is a telecommunications carrier for the purposes of Part 54 of the FCC's rules. 47 U.S.C. § 54 *et seq.* SBI is a commercial mobile radio service provider pursuant to the definition of "mobile service" provided in 47 U.S.C. § 153(27). SBI provides interstate telecommunications services as defined in 47 U.S.C. § 254(d) and 47 C.F.R. § 54.703(a). SBI is not a rural telephone company within Arizona and New Mexico as defined by 47 U.S.C. § 153(37) and 47 C.F.R. § 51.5 and is not a rural telephone company within Arizona and New Mexico under Part 54 of the FCC's rules.

II. The Services Offered by SBI are Not Subject to State Jurisdiction

2. By this application, SBI requests designation as an ETC for only those parts of its service area which encompass federally reserved Native American lands.¹ As the Commission recently recognized with regard to a number of other carriers providing service to Native American lands, such carriers "are not subject to the jurisdiction of a state commission for purposes of 214(e)(6)" where they provide service to federal Indian reservations.²

III. The FCC Has Plenary Authority to Designate SBI as an ETC.

3. The Commission has determined that it had the ultimate responsibility to effectuate Section 254 of the Act, 47 U.S.C. § 254, which governs Universal Service.³ Although the language of Section 254(a) directs the Commission to implement the recommendations of the Federal-State Joint Board for Universal Service, the Congress empowered the Commission to act independent of the Joint Board by directing in Section 254(c)(2) that Universal Service is "an evolving level of telecommunications that the Commission shall establish periodically."⁴ Moreover, the Commission has stated, "there is no doubt that the Commission - - with the help of the states - - is to establish in the first instance what services should be supported and what are the necessary mechanisms to do

¹ A copy of SBI's service area, including the boundaries of the Native American lands that it serves, is attached here as Exhibit A.

² *Designation of Fort Mojave Telecommunications, Inc., et al.*, 13 FCC Rcd 4547, 4549, (Com. Car. Bur. 1998).

³ *Federal-State Joint Board on Universal Service (Report and Order)*, 12 FCC Rcd 8776 (1997).

⁴ *Id.*, 12 FCC Rcd at 9192.

so."⁵ SBI requests the FCC to independently implement a Universal System regime on Native American lands serviced by SBI.⁶ Under the circumstances described below, decisive action is needed to bring service to people most in need of basic telecommunications service.

IV. Compliance with Section 214(e)(1)

4. Section 214(e)(1) of the Act provides that common carriers designated as ETCs shall, throughout their service area, (1) offer the services that are supported by federal universal service support mechanisms either using their own facilities or a combination of their own facilities and resale of another carrier's services, and (2) advertise the availability of such services and the charges therefore using media of general distribution. 47 U.S.C. §214(e)(1)(A)&(B). The services which are supported by the federal USF are: (1) voice grade access to the public switched network, (2) local usage, (3) dual tone multi-frequency signaling or its functional equivalent, (4) single-party service or its functional equivalent, (5) access to emergency services, (6) access to operator services, (7) access to interexchange service, (8) access to directory assistance, and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a). SBI currently offers all of these services throughout its licensed service area.

5. Pursuant to Section 214(e)(1)(B), 47 U.S.C. § 214(e)(1)(B), SBI presently advertises the availability of each of the supported services detailed above, throughout its licensed service area, by media of general distribution. The methods of advertising utilized include television, newspaper,

⁵ *Id.*, 12 FCC Rcd at 9193.

⁶ To the extent the Commission identifies any rules which bear on this submission, SBI respectfully requests the FCC to grant appropriate waivers to expedite the provision of universal service to Native Americans.

magazine, radio, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising. Examples of relevant advertisements are submitted herewith as Exhibit B.

V. Statement of Need

6. SBI is the A Band cellular carrier in the Arizona 3 RSA and is also a licensed A Band cellular provider in substantial areas within the New Mexico 1 and 3 RSAs. Currently SBI's licensed service area includes approximately 115,000 potential Native American subscribers. SBI's operating network covers almost all of the Navajo, Hopi, Apache and Zuni reservations and the company plans further expansion, with its goal being to provide usable signal to as many Native American persons as possible. Most live in remote areas where it is cost prohibitive to provide traditional wireline telecommunications services. In many portions of its service area, SBI is the only telecommunications provider offering any service and it is doubtful that any wireline carrier will ever extend lines to these areas. Roughly six people reside in each square mile covered by SBI. SBI is willing to expend the resources necessary to offer service to every potential subscriber in its licensed service area.⁷

7. Within the Navajo Nation, telephone subscribership stands at roughly 23% and in the Zuni Nation subscribership is below 50%. Designation as an ETC would allow SBI to receive USF funds for the provision of service to people living in these remote areas. SBI submits that the extent of its current network expansion into unserved areas qualifies it for USF funding because the infrastructure needed to serve most of the people on the four reservations covered by SBI is already

⁷ The Commission's staff has requested that SBI provide letters from officials of the tribes which SBI proposes to serve formally requesting that Universal Service be provided. SBI is in the process of obtaining these letters and will submit them as a supplement to this petition at the earliest possible date.

in place. SBI is already developing innovative programs targeted at the large number of people who have no telephone service.

8. These long-neglected segments of Arizona and New Mexico are on the verge of having basic telephone services made available to them. SBI has diligently constructed its network so as to reach these unserved areas which wireline telephone companies readily admit may never be reached by wire. The problem for many Native Americans is no longer one of access but is one of phonelessness. By making available federal USF funds, the Commission will expedite telephone service to the Native American people living in these remote regions.

9. SBI requests the Commission to designate SBI as an ETC for all of the federally reserved Native American lands within its service area. In addition, for those areas within the reservations served by a rural telephone company, SBI requests the Commission to find that SBI's designation as an ETC would serve the public interest, as required by Section 214(e)(2) of the Act.

10. SBI respectfully requests the Commission to expedite processing of this application and designate SBI as an ETC at the earliest possible date.

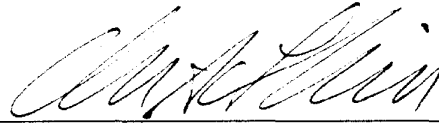
11. SBI hereby certifies that neither the applicant nor any party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 USC §862. The specific parties to the application to which this provision attaches are Smith Bagley and Richard Watkins.

WHEREFORE, pursuant to Section 214(e)(6) of the Act, SBI requests the Commission to issue an Order finding that the designation of SBI as an ETC for the federally reserved Native American lands within its service area would serve the public interest.

Respectfully submitted,

SMITH BAGLEY, INC.

By: _____



David A. LaFuria
Samuel F. Cullari
Its Attorneys

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Washington, D.C. 20036
(202) 857-3500
June 1, 1999

Exhibit A

111°

110°

109°

108°

C 37°

Smith Bagley, Inc.
NE Arizona & NW New Mexico Cellular Coverage

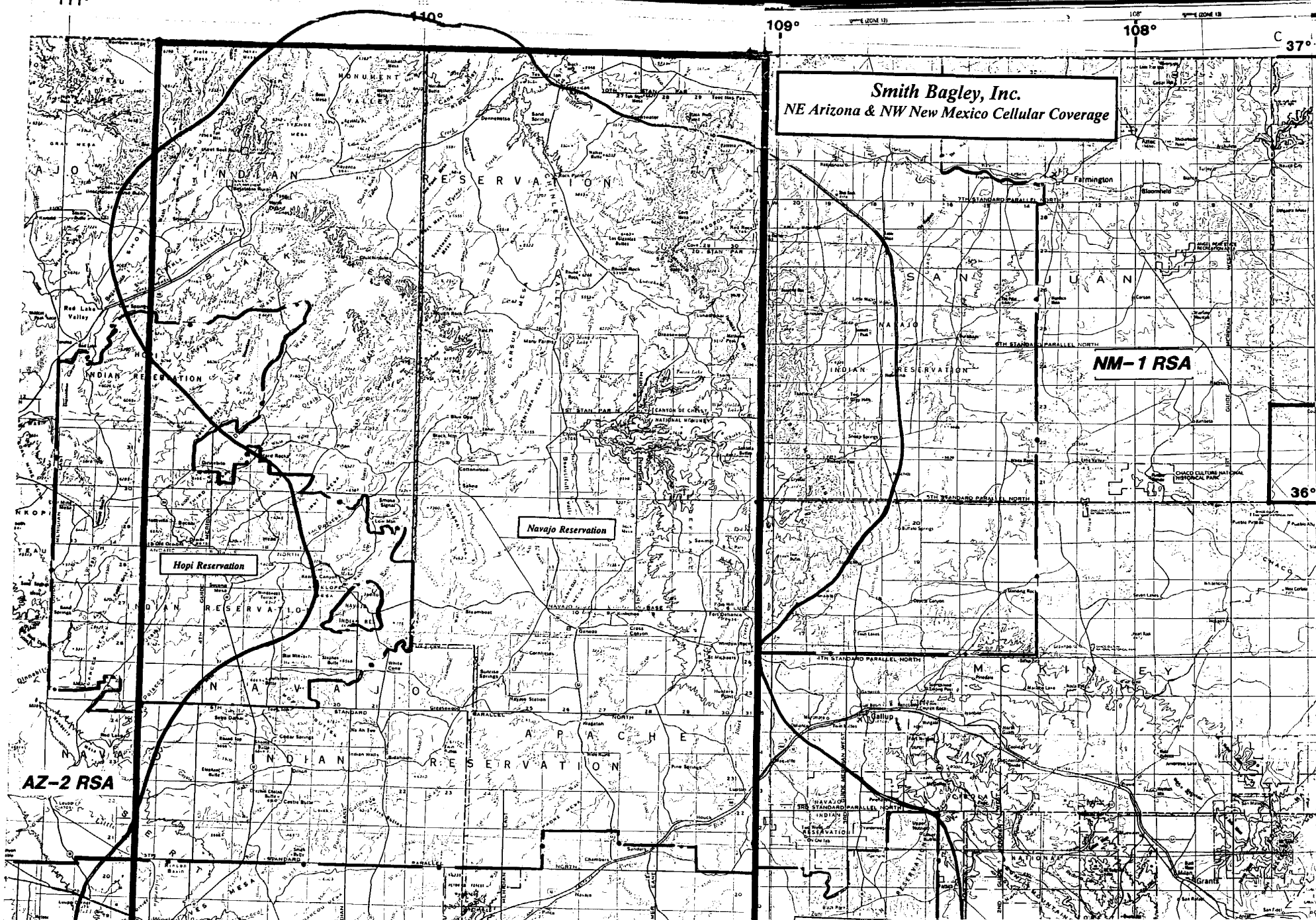
NM-1 RSA

Navajo Reservation

Hopi Reservation

AZ-2 RSA

36°



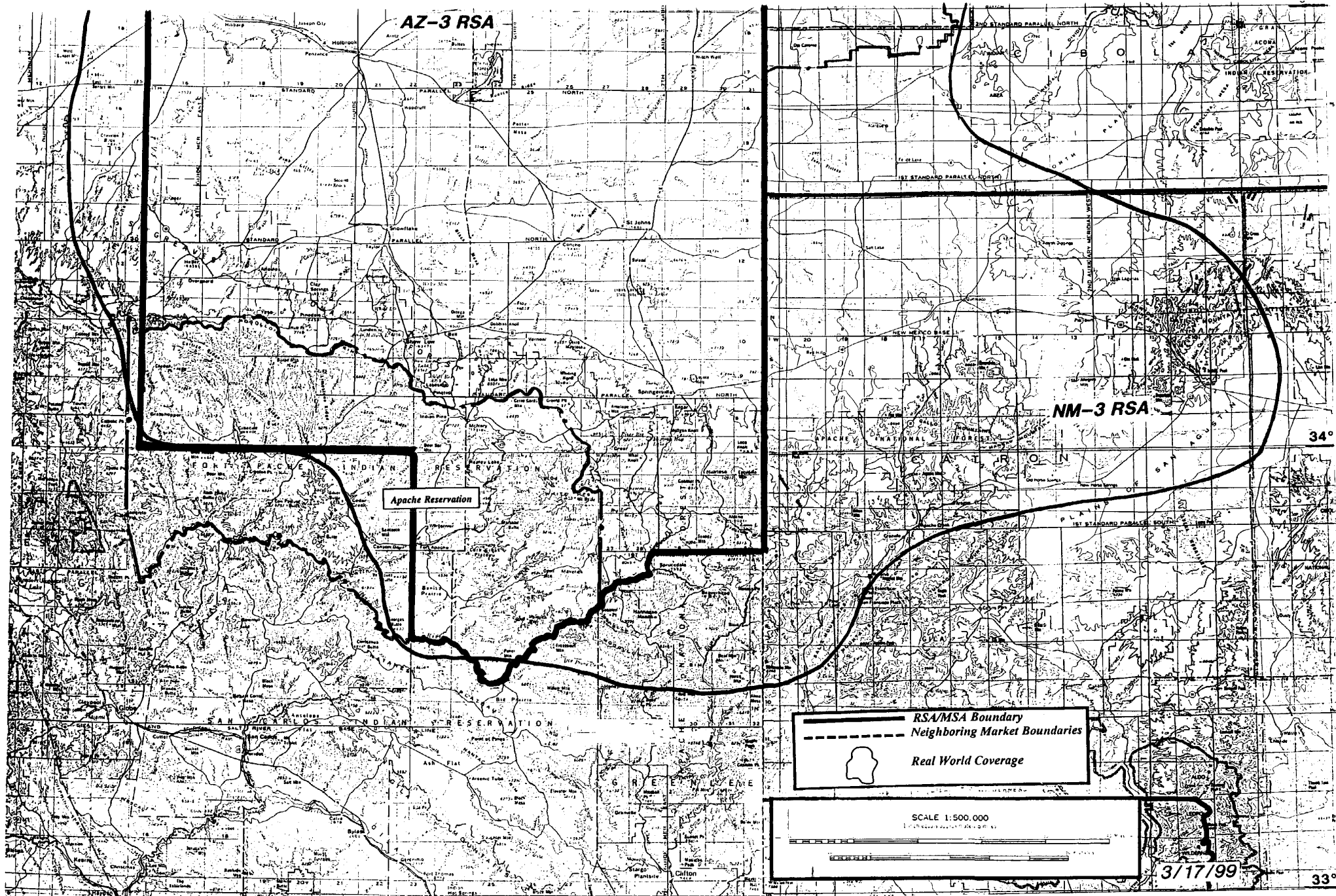


Exhibit B

October, 1998

Dear Customer,

We're watching out for you! We are here to help you and we have a rate plan that's right for you. If you are using your cellular phone more than you expected, you will benefit by moving to our new **Super-Savings Small Talk Plan**. Call us today to see how the Super-Savings Small Talk plan can save you money beginning January 1, 1999.

This is what you will receive when you change your current plan to the Super-Savings Small Talk Plan:

Monthly Access	Included Free Minutes (home area)	Bonus Minutes (thru December, 1999)	Total Monthly Free Minutes
\$ 19.95	25	20	45

We are adding 20 home airtime minutes to your free minutes each month until December, 1999. It's our way of saying thank you for your business! It takes only a few minutes to move to our new Super-Saving Small Talk Plan, and we can do it over the phone.

If you call us and request your change before December 15, 1998 you will receive an additional 20 use or lose home airtime minutes to be used in 1998. Hurry—call and move to our new Super-Savings Small Talk Plan and get these great bonus minutes until January 1, 1999. Call toll free 1-800-730-2351 or from your cellular phone by pressing *611.

CellularOne of N. E. Arizona
1500 S. White Mountain Rd.
Show Low, AZ. 85901

NO DEPOSIT NO CREDIT NO KIDDIN'

- ✓ *No Credit Check*
- ✓ *No Security Deposit*
- ✓ *Cost Control*
- ✓ *Security*
- ✓ *Only \$75.00 + Phone*



EZONE[®]
by
CELLULARONE[®]



Number ONE

CELLULARONE®

C.A.R.E.S.

1500 S. White Mountain Rd.
Show Low, AZ 85901
Phone: 520-537-7567
Toll Free: 800-730-2351
Fax: 520-537-4902



Pay to the order of Cellular One of NE Arizona

\$17.50

Seventeen Dollars and ⁵⁰/₁₀₀ For:

(Customer's name)

Plus 45 Minutes of Free Airtime!



Receive \$17.50 credit towards activation fee plus an additional 15 free minutes of airtime on the first three months of full service with this coupon. This coupon is valid for new activations only from 4/1/99 thru 6/30/99 and must be presented at the time of activation. OAC. Limit of one coupon per new activation. Some restrictions apply. Promotion code 45.

Ponderosa Marketing

P.O. Box 2503
Pinetop, AZ 85935
(520) 369-1485

BULK RATE
U.S. POSTAGE
PAID

Pinetop, AZ
Permit No. 10

CARRIER ROUTE PRESORT

ECRWSS

**Valued Customer
Box Holder**

Pick up additional copies at:

Bank One
Pinetop Shell
Family Fun Park
The Zoo

and many local Hotels & Motels

CERTIFICATE OF SERVICE

I, Kimberly Verven hereby certify that I have, on this 2 day of June, 1999, have had hand delivered, a copy of the foregoing PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER filed today to the following:

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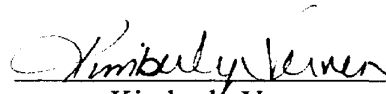
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